



REPUBLIC OF KENYA



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**Cybele Limited v Njau & another (Environment and Land Case Civil Suit
374 of 2017) [2025] KEELC 1226 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1226 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT 374 OF 2017
CA OCHIENG, J
MARCH 12, 2025**

BETWEEN

CYBELE LIMITED PLAINTIFF

AND

PATRICK NJAU 1ST DEFENDANT

SABAKI RESIDENTS' ASSOCIATION 2ND DEFENDANT

JUDGMENT

1. By a Plaint dated the 12th September 2017 and amended on 1st July 2019, the Plaintiff prays for judgment against the Defendants for:
 - a. An injunction restraining the Defendants, their servants, workmen and agents, from entering on and/or from erecting or causing to be erected thereon any structures, or from in any way interfering with the Plaintiff's use and enjoyment of the Plaintiff's property.
 - b. An order of eviction from the said premises.
 - c. Damages.
 - d. Interest thereon.
 - e. Costs of this suit.
 - f. Any other relief the court deems fit to grant.
2. The 1st and 2nd Defendants in their joint statement of defence dated the 22nd December 2020 denied the averments in the Plaint except the descriptive and contended that initially the suit land was part of a public utility plot within LR No. 11895/20 Mavoko Municipality. Further, that the said land had been set aside by the Numerical Machining Complex Limited. They confirm that Numerical Machining Complex Limited upon obtaining approval for the subdivision of LR No. 11895/20 surrendered



public utility plots to the Government for the reserved purposes. Further, vide a letter dated the 8th July, 2002, from Numerical Machining Complex Limited, it surrendered the land to the Commissioner of Lands. They reiterate that in a Report of the Taskforce on Irregular Appropriation of Public Land and the Squatter Problem in the Athi River District appointed vide Gazette Notice No. 8467 of 22nd July 2011, it recommended that the suit land should be reclaimed by the government. They insist that suit land is a public utility plot reserved for a public secondary school and they use it for football purposes for the area residents.

3. The matter proceeded to hearing where both the Plaintiff and Defendants' called one witness each, while there were three expert witnesses who testified.

Evidence of the Plaintiff

4. The Plaintiff claimed that it is the lawful registered proprietor of the parcel of land known as LR No. 26699/22, hereinafter referred to as the 'suit land'. It contended that it discovered on the 21st July 2017, that the fence surrounding the suit land had been brought down. Further, that the discovery was made by one of its employees who had gone to inspect building materials that had been taken to the suit land for purposes of construction. The Plaintiff was informed that it was the 1st Defendant who had trespassed on the suit land wherein upon being informed that the said land was private, he threatened the Plaintiff's employee that youth would be mobilized to lynch him, if he ever set foot on the said land. The Plaintiff averred that the Defendants had trespassed on the suit land in 2014, of which a report was made at Mlolongo Police Station and to the Chief, Mlolongo.

5. The Plaintiff produced the following documents as exhibits:

Copy of Title deed of LR No. 26699/22, Copy of the Deed Plan for LR No. 26699/22, Copy of occurrence Book Report Number 44/28/2014 dated 28th August 2014, Photographs of the fence at LR No. 26699/22 being put up taken on 28th August 2014, Photographs of the fence at LR No. 26699/22 after they were removed taken on 28th August 2014, and Copy of the Investigation letter from the National Land Commission of Land Reference Number 26699/22 dated 16th February 2018.

Evidence of the Defendants

6. The Defendants insisted that the suit land is public land. They admitted erecting football goal posts on the suit land. They confirmed that the suit land is used by the youths from the area on weekends and school holidays, for football purposes. It was their contention that in July, 2017, in a meeting, the area youth requested the 2nd Defendant to facilitate acquisition of the said goal posts as well as other sports material. They claimed that about 21st July 2017, a group of persons found the youth practicing for an upcoming tournament, when they violently dismantled the posts and threatened the said youth with dire consequences if they did not vacate the football pitch, which they claimed is erected on the suit land.

7. The Defendants produced the following documents as exhibits:

Copy of Letter from Commissioner of Lands to Chalan Associates dated 8th July 2002; Copy of Letter from Numerical Machining Complex Ltd to Commissioner of Lands dated 4th February 2008; Copy of Deed Plan No. 245657 and Physical Plan surrendered by Numerical Machining Complex Ltd to the Commissioner of Lands on 4th February 2008; Copy of Photographs of Boards erected by National Land Commission.



Submissions

8. The Plaintiff in its submissions provided a background of the dispute herein and submitted that the root of its title to the suit land is untainted by illegality/irregularity as claimed by the Defendants. It contended that the Defendants' insistence that the suit land is reserved for public utility had no basis as the lawful use of the property was adhered to, in all the processes leading to allocation.
9. It further submitted that nothing in the Task Force on Irregular Appropriation of public land and the squatter problem in the Athi-River District appointed vide Gazette Notice No. 8467 of 22nd July 2011 could affect its title within the meaning of the case of Dina Management Limited v County Government of Mombasa & 5 Others (Petition No. 8 (E010) OF 2021). Further, that the National Land Commission takes precedence over any taskforce in the management of public land.
10. It was its further submission that since the Defendants did not deny unlawfully gaining access to the suit land, they were guilty of trespass hence entitling it, to damages. To support its averments, it relied on the case of Rhoda S Kiilu v Jiangxi Water and Hydropower Construction Kenya Limited [2009] eKLR.
11. The Defendants in their submissions, reiterated their evidence and insisted that the suit land was reserved for public utility. Further, that since there was no evidence tendered demonstrating the requisite elaborate process of re-allocation and subsequent acquisition by the Plaintiff, it remains public land. They averred that as per their exhibits, it confirms that the suit land was part of public utility plots within LR No. 11895/20 MAVOKO Municipality. Further, that the said land was set aside by the Government for use by Numerical Machining Complex Limited, which surrendered it back to Government with a pre condition for subdivision and hence not available for re-allocation to a third party given its reserved purpose.
12. It further submitted that the Report of the Task Force on Irregular Appropriation of public land and the squatter problem in the Athi-River District appointed vide Gazette Notice No. 8467 of 22nd July 2011 recommended that the parcel should be reclaimed by the government. It was emphatic that the indefeasibility of title under the Registration of Titles Act, which regime the Plaintiff's title is purportedly registered under is contemplated for purchasers from a proprietor and not an allottee of public land and it is not absolute in instances of fraud/misrepresentation.
13. The Defendants further submitted that the Plaintiff cannot seek protection under the doctrine of innocent purchaser for value as stated in the Dina Management case (supra). To support their averments, they relied on the case of Sigona Jua Kali Association v County Government of Kiambu & Others [2019] eKLR and Kenya Anti-Corruption Commission v Online Enterprise's Limited & 4 Others [2019] eKLR.

Analysis and Determination

14. Upon consideration of the Plaintiff, Statement of Defence, testimonies of the witnesses, exhibits and rivalling submissions, the following are the issues for determination: Whether the suit land is public land. Whether the Plaintiff legally acquired the suit land. Whether the Defendants have trespassed on the suit land. Whether the Plaintiff is entitled to the orders as sought in the Plaintiff.

As to whether the suit land is public land and if the Plaintiff legally acquired it.

15. The Plaintiff claims to be the owner of the suit land and produced a Certificate of Title and Deed Plan to that effect. The Defendants contend that the suit land is public land. PW1 Patrice Lumumba Musyoka who was representing the Plaintiff confirmed that they had applied for the allotment of the



suit land in 2008 but did not have a copy of the application letter in court. During cross examination, he explained that they were allotted the suit land in 2008. Further, that they acquired the suit land when it was vacant. He clarified that from the Letter dated the 4th February, 2008 from Numerical Machining Complex Ltd, it indicates LR No. 26699/22 was meant for a secondary school. Further, as per letter dated the 16th February 2018, from the National Land Commission, it confirms that the suit land belonged to the Plaintiff. He was emphatic that the Plaintiff obtained its Certificate of Title from the Ministry of Lands. Further, as per the Deed Plan, for LR No. 26699/22, it indicated that the land was reserved for a secondary school. PW1 explained that the Plaintiff was running a school on the suit land called Mt. Olive Academy.

16. DW1 Patrick Njau who was representing the Defendants insisted that the suit land was public land. Further, that the Plaintiff had obtained its title unprocedurally. During cross examination, he claimed that the area residents had been playing football on the suit land and it is their advocate who informed them that the said land was public. He stated that the Deed Plan for the suit land indicated secondary school but there is no distinction of public or private school. He further confirmed that there was a school running on the suit land called Mt. Olive Catholic School, which used to be known as Mt. Olive Academy and he did not want it closed.
17. An expert witness Justus Matheka who is the Principal Land Administration Officer from the National Land Commission confirmed that initially LR No. 26699/22 had belonged to Numerical Machining Complex Limited. It was his testimony that allotment to the Plaintiff by the Commissioner of Lands was legal, so long as it used it the land for educational purposes. He was emphatic that the suit land did not belong to the National Land Commission. Further that the National Land Commission does not erect posters on public land.
18. During cross examination, he confirmed that he personally did the subdivision that culminated into LR No. 26999/22 among other parcels of land. Further, that Numerical Machining Complex Limited surrendered various parcels of land. He stated that it is the Commissioner of Lands that allocated the suit land to the Plaintiff and the handwritten note on the Deed Plan as secondary school is not authentic.
19. An expert witness No. 2 George Makateto from Numerical Machining Complex Limited confirmed that the said institution had surrendered 500 acres of land to the Commissioner of Lands. Further, that the suit land emanated from LR No. 11895/20. He explained that, at the point of Surrender, various portions of land had been set aside for public utility. Further, that the suit land was set aside for a secondary school but the title does not draw a distinction between public or private utilities.
20. The Expert Witness No. 3 George Gitonga, the Land Registrar, in his testimony confirmed that as per their records, the Plaintiff had been allocated LR No. 26699/22 IR 129168 (suit land) and issued with its title. Further, that the Commissioner of Lands issued the Grant on 28th January 2011, which was registered on 2nd March 2011, and as per Search dated the 11th June 2024, the said land belongs to the Plaintiff.
21. During cross examination, he explained that as per their records, the Deed Plan was genuine because it is the Director of Survey who allocates reference numbers. Further, that the Reference Number 26699/22 which is in the title, is also in the Deed Plan. He was emphatic that despite some documents missing from their file, they have correspondence, which confirm that the said land was processed.



22. I note from the contents of a Letter dated the 16th February 2018 written by the Chairman of the National Land Commission, he confirmed that the Plaintiff was legally allotted the suit land and used it for educational purposes. I wish to reproduce an excerpt here below:

‘Upon receipt of the Complaint, the Commission undertook investigations and found the following:

- I. The Land reference LR No. 26699/22 measures 6.0 hectares approximately (15 acres).
- II. The allottee applied for the land in 2008 from the Ministry of Lands to Cybele Limited vide letter of allotment reference 33745/XXIV on 17th March 2008. They accepted the offer and conditions therein and made payments after which they were issued with a title. The allocation was done after consideration of all necessary preliminary issues including the following:
- III. Cybele Limited was the first applicants for allocation of the plot. They submitted their application to the Commissioner of Lands in March, 2008.
- IV. Upon receipt of their application, the Ministry confirmed that the plot had indeed been planned for education purpose and was not committed elsewhere.
- V. The Commissioner of Lands approved their application and a letter of allotment issued on 17th March 2008.
- VI. Upon allocation of the plot to Cybele Limited, a special condition was imposed that the land should strictly be used for education purpose and that no change of user will be allowed without the consent of the concerned authorities.
- VII. A lease IR No. 129168 was issued for a term of 99 years with effect from 1st April 2008.
- VIII. Upon receipt of the title after registration, Cybele Limited presented building plans for approval within the stipulated period and in adherence to special condition No. 2 of the title, for the development of a school.
- IX. All the approvals for development permission were granted by the County Physical Planning Officer Letter ref. PPD / MKS /SR /2 / VOL. VIII (33) approval from County Surveyor Ref. REC/4/MKS/VOL. XIX/106 dated 19th September 2016 and PPA.2 Ref. S/N: 63703333/2016 APPLICATION No. 6370/09/2016..... VII. The allottee has indeed built a school called Mt. Olive Academy which comprises of a primary school on one part of the land and intends to build another school on the remaining parcel as per the user of the land which was prescribed as for ‘Educational Purposes.’ VIII. The Commission further observed that the state allows private sector participation in the development of schools. In this regard, the allocation to Cybele Limited is legal and in order provided that the Land is used for educational purposes as per the conditions of the lease. Since the allottee, Cybele Limited has developed a school, the Commission found NO merit in the claim and dismisses the complaint. ‘



23. From this excerpt alone, I find that the National Land Commission has indeed outlined the process the Plaintiff adhered to, in acquiring the suit land, which included applying for it in March 2008, being issued with a letter of allotment dated 17th March 2008, accepting the terms of allotment, paying requisite fees, being issued with a Grant and obtaining development permission to put up a school thereon as per the required use.
24. The Defendants have sought to heavily rely on a report by the Taskforce on Irregular Appropriation of Public Land and the Squatter Problem in the Athi River District appointed vide Gazette Notice No. 8467 of 22nd July 2011. I note in the said report, they had recommended that the government to reclaim the suit land. It is however trite that it is the National Land Commission which is mandated to deal with management of public land as well as its allocation. Further, I note from the contents of the Letter dated the 16th February 2018, the National Land Commission confirmed that upon investigation, it revealed that the Plaintiff was legally allotted the suit land, which is used for the reserved purpose. I opine that a Taskforce report cannot be deemed to supersede the findings of the National Land Commission. The Defendants contended that the suit land was reserved for a secondary school and referred to the handwritten note on the Deed Plan. It is not in dispute that the Plaintiff is running a school on the suit land. Further, I note one Justus Matheka who is the Principal Land Administration Officer from the National Land Commission confirmed that it is the Commissioner of Lands who allocated the Plaintiff the suit land, and the handwritten note of 'secondary school', on the Deed Plan is not authentic.
25. From the evidence tendered in court including the testimonies of all the witnesses, I opine that the Plaintiff's root of title is indeed explained. To my mind since Numerical Machining Complex Limited confirmed that the suit land was surrendered on 4th February 2008 to the government, it was hence available for allocation. In my view, the burden of proof was upon the Defendants to prove that the Plaintiff fraudulently obtained its title from the Commissioner of Land, but they have failed to discharge it.
26. Further, from the excerpt which I reproduced above, it is clear that there had been a complaint over the allotment of the suit land to the Plaintiff, which the National Land Commission that is the body mandated to deal with public land and its allotment, investigated and determined.
27. The Defendants in their submissions have argued that the Plaintiff failed to demonstrate the allotment process and even produce documents. Further, that there was no Change of User nor Gazetted Approved PDP from Director of Physical Planning. However, it is my considered view since the suit land was already set aside for a school, and the Plaintiff adhered to the proper process in acquisition of the said land and conditions set out in the Grant including the Deed Plan, this alone cannot invalidate the Plaintiff's title.
28. I opine that the Defendants failed to furnish court with an approved subdivision scheme yet the burden of proof was upon them to do so, failure of which it is difficult to confirm if the suit land was strictly supposed to be for a public school and not a private one.
29. On proof of proprietorship, section 26 (1) of the [Land Registration Act](#) provides inter alia:

“The Certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except - (a) on the ground of fraud or misrepresentation to which the person is proved to



be a party; or (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

30. While in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held that:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

See also the case of *Dr. Joseph Arap Ngok – Vs – Justice Moiyo Ole Keiwua & 5 Others*, Nai. Civil Appeal No. 60 of 1997.

31. Based on the facts before me while relying on the legal provisions cited as well as associating myself with the quoted decisions, I find that the Plaintiff actually explained the root of its title, which has been supported by the various experts who testified, hence legally acquired the suit land. In the circumstances, I find that the Plaintiff indeed holds a valid title to the suit land and will proceed to uphold it.

As to whether the Defendants have trespassed on the suit land.

32. The Plaintiff claims the Defendants have trespassed on the suit land and erected goal posts thereon. Further, that in 2014, the Defendants had trespassed on suit land and damaged the boundary wall. DW1 in his testimony confirmed that the Defendants had entered the suit land and the youth were playing soccer thereon.

33. On the issue of trespass, I wish to refer to the definition of the same as contained in *Clerk & Lindsell on Torts*, 18th Edition, page 923, paragraph, 18-01 where it states thus:

“As any intrusion by a person on the land in the possession of another without any justifiable cause”.

34. In the case of *Municipal Council of Eldoret v Titus Gatitu Njau* [2020] eKLR, the Court of Appeal favourably cited the case of *M’Mukanya v M’Mbiyiwe* (1984) KLR 761 and stated inter alia:

“Trespass is a violation of the right to possession and a plaintiff must prove that he has the right to immediate and exclusive possession of the land which is different from ownership (See *Thomson v Ward*, (1953) 2QB 153.”

35. Based on the evidence before me while relying on the decision cited, I find that the Plaintiff has fully demonstrated that the Defendants including their agents have indeed trespassed on the suit land.

36. In the circumstances, I find that the Plaintiff has proved its case on a balance of probability and will proceed to enter judgement in its favour in the following terms:

- a. An order of injunction be and is hereby issued restraining the Defendants, their servants, workmen and agents, from entering on and/or from erecting or causing to be erected thereon any structures, or from in any way interfering with the Plaintiff’s use and enjoyment of LR No. 26699/22 IR No. 129168.



- b. An order of eviction be and is hereby issued evicting Defendants or their agents from LR No. 26699/22 IR No. 129168.
- c. Costs of this suit is awarded to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12th DAY OF MARCH 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Muia for 1st and 2nd Defendant

Mwalugho for Plaintiff

Court Assistant: Joan

